

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department on its own Motion into  
the Appropriate Pricing, based upon Total Element Long-  
Run Incremental Costs, for Unbundled Network Elements  
and Combinations of Unbundled Network Elements, and  
the Appropriate Avoided Cost Discount for Verizon New  
England, Inc. d/b/a Verizon Massachusetts' Resale  
Services in the Commonwealth of Massachusetts.

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D.T.E. 01-20

**HEARING OFFICER'S RULING RE: VERIZON'S OVERDUE  
RECORD REQUEST RESPONSES**

February 25, 2002

I. INTRODUCTION

During 17 days of evidentiary hearings in D.T.E. 01-20, Part A, between January 7 and February 7, 2002, the Department of Telecommunications and Energy ("Department") issued 100 Record Requests to the parties. The Department issued 77 Record Requests, and three supplemental requests, to Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"); 17 requests to AT&T Communications of New England, Inc. ("AT&T"); one to both Verizon and AT&T; four to the CLEC Coalition<sup>1</sup>; and one to Z-Tel Communications, Inc.

According to the Ground Rules in this proceeding, Record Request responses are due five business days after being issued. Hearing Officer Memorandum Re: Procedural Conference and Procedural Schedule; Service List; and Ground Rules, February 9, 2001, at 4. As of February 21, 2002, nine business days after conclusion of the evidentiary hearings, there were 22 outstanding Department Record Requests – 21 of which were issued to Verizon, and one to AT&T. The 21 Verizon responses were overdue; the response from AT&T was not overdue, because it was dependent upon receipt of one of Verizon's overdue responses. In addition, many of the Record Request responses that Verizon had filed by February 21 had been filed well after their due date.

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<sup>1</sup> Allegiance Telecom of Massachusetts, Inc., Covad Communications Company, El Paso Networks, LLC, and Network Plus, Inc., have participated in this proceeding collectively as the CLEC Coalition.

On February 21, the Hearing Officer directed Verizon to provide the responses to the overdue Record Requests by close of business on February 22, and, if unable to provide certain responses, to notify the Department immediately and provide justification for any further delay in responding to those requests.<sup>2</sup> Verizon provided 11 of the overdue responses on February 22, and notified the service list after the close of business that it expected to respond to the majority of the remaining requests by February 26.

## II. POSITIONS OF THE PARTIES

### A. AT&T

AT&T notified Verizon and the Department on February 20, 2002, that it was awaiting the responses to a number of record requests, the last of which was issued on January 31 and due February 7; thus, other outstanding responses were even more overdue. AT&T stated that it needed the responses in time to consider them in filing its initial brief, due March 5, 2002.<sup>3</sup>

Following Verizon's partial filing of responses on February 22, AT&T responded that it was troubled that Verizon still failed to provide 10 of the responses; that Verizon offered no good reason for its failure; and that Verizon announced that it may need unspecified additional time to provide some of answers. According to AT&T:

Verizon's unilateral decision not to make available the personnel necessary to prepare the outstanding responses is not a reasonable justification for Verizon's failure to answer. Some of these responses were due over three weeks ago. It was Verizon's obligation to make the necessary personnel available in order to provide timely responses. Its decision not to do so may explain the missing responses, but it in no way justifies them.

It is unfair to AT&T and the other parties for Verizon to withhold the outstanding responses, in light of the very tight briefing schedule of which Verizon has been aware throughout the pendency of these record request responses. Given the time that will be required for the physical production of the initial briefs, if Verizon does not provide the missing responses until Tuesday [February 26] or later we will have only a few days to analyze them and try to determine how they relate to the issues in this case. Verizon's unilateral decision to delay its record request responses is unfairly prejudicing parties.

We respectfully request that Verizon be required to provide all outstanding responses by noon on Tuesday, February 26, or

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<sup>2</sup> E-mail to service list from Marcella Hickey, Hearing Officer, February 21, 2002.

<sup>3</sup> E-mail to service list from Ken Salinger, Attorney for AT&T, February 20, 2002.

desist from doing so. If Verizon is unable to answer certain record requests by that time, that should be taken by the Department to mean that Verizon does not have and cannot provide the additional supporting evidence sought in the still-pending record requests.<sup>4</sup>

B. Verizon

Verizon did not, in the course of the evidentiary hearings or after, request that it be given additional time to file any particular Record Request responses. Upon the Hearing Officer's February 21 directive to provide all overdue responses immediately or provide justification for failing to do so, Verizon responded on February 22 that it was filing 11 of the 21 overdue requests, but was

unable to complete the remainder because of the unavailability of personnel who are preparing the responses. The majority of the remainder will be filed no later than Tuesday [February 26]. However, there are likely to be a few that will take longer to complete because of their complexity. I will submit a complete report with estimated filing times for those that will not be ready by Tuesday.<sup>5</sup>

III. ANALYSIS & FINDINGS

The remaining overdue Department Record Request responses that were not included with Verizon's February 22 filing are as follows (see Appendix for more detail): DTE 1-S, due February 7; DTE-36 and DTE-38, due January 29; DTE-40, due January 30; DTE-50, due February 1; DTE-83, due February 13; DTE-88 and DTE-96, due February 14; and DTE-98 and DTE-99, due February 21.

Understandably, responding to 80 Record Requests is a significant undertaking for any party. However, Verizon has consistently filed Record Request responses late, and a number of the Verizon responses remaining overdue are more than three weeks late. Verizon has had more than sufficient time to evaluate any anticipated difficulty in responding to these, yet never indicated any particular problems, and has yet to provide the justification requested by the Department for failing to respond, beyond vague statements about "complexity" and unavailable personnel.

AT&T is justified in its complaints that Verizon's failure to respond to a significant number of requests on time is unfair and prejudicial to other parties, given the tight briefing schedule. However, AT&T's proposed solution – that the Department not accept any further responses from Verizon after a definitive deadline – is not satisfactory to the Department. The

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<sup>4</sup> E-mail to service list from Ken Salinger, Attorney for AT&T, February 23, 2002.

<sup>5</sup> E-mail to service list from Robert Werlin, Attorney for Verizon, February 22, 2002.

Department issued these requests to obtain information that the Department considers necessary and important to its analysis and for compiling a complete record in this proceeding.<sup>6</sup> Given that Verizon is the proponent of a cost model it seeks to have the Department adopt in this proceeding, Verizon should be prepared to devote whatever resources are necessary to timely completion of the Record Requests, and, by extension, the evidentiary record on which the Department will rely. Delay in responding affects not only the other parties' ability to prepare briefs, but also the Department's ability to adequately review the numerous responses and follow up with clarifying questions where necessary.

AT&T requests that, if Verizon is unable to answer certain Record Requests by a final deadline, the Department conclude that "Verizon does not have and cannot provide the additional supporting evidence sought in the still-pending record requests." However, Verizon has given no indication that it is completely *unable* to provide responses to any of the outstanding requests, only that it cannot provide them on time. The Department may discount the evidentiary weight of untimely responses if and where appropriate, but refusing to accept responses that can be provided does nothing to serve the Department's interest in obtaining the information it seeks and in compiling as complete and accurate a record as possible.

Nevertheless, Verizon cannot simply ignore the Department's procedural deadlines and submit Record Request responses on its own time. Regardless of the strain on Verizon's resources, it should comply as closely as possible with the five-business-day rule. We find that an equitable solution given the particular circumstances at this point in the proceeding is to allow Verizon's opponents to file supplemental initial briefs. The supplemental briefs may be filed up to seven business days following receipt of the final Record Request response from Verizon, and may address information in the outstanding Record Request responses *only*. The Record Request responses subject to the supplemental brief filing are those that were not yet provided as of February 22, 2002 – as listed above and in the Appendix to this ruling. Verizon may respond to the supplemental briefs in its March 29 Reply Brief only; thus the time Verizon has to respond is dependent upon when it files its final responses.

We also note that three other Record Requests are outstanding in this proceeding. DTE-22 to AT&T is dependent upon Verizon's response to DTE-23. Verizon filed its response to DTE-23 on February 22; thus DTE-22 is due on March 1. The Department issued its Record Request 100 to Z-Tel on February 22; it is also due March 1. Finally, Record Request VZ-1 to AT&T/WorldCom was issued January 8. WorldCom objected to the request, but the Hearing Officer ruled on February 7 that AT&T/WorldCom should respond to it. Under the Ground Rules, the response was due no later than February 14. AT&T/WorldCom is directed to provide this response immediately.

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<sup>6</sup> We note that the Department had to issue many of the Record Requests because Verizon's witnesses were unable to answer the questions posed at the evidentiary hearings.

IV. RULING

Verizon Massachusetts is directed to file immediately all overdue Record Request responses in D.T.E. 01-20, Part A.

AT&T/WorldCom is directed to provide its overdue response to RR-VZ-1 immediately.

RR-DTE-22 and RR-DTE-100 are due on March 1, 2002.

Parties other than Verizon may file supplemental initial briefs up to seven business days following Verizon's filing of the last overdue Record Request response. The supplemental briefs may address any information contained in the Record Request responses that remained overdue as of February 22, 2002. Verizon may respond to the supplemental briefs in the March 29 reply brief.

\_\_\_\_\_/s/\_\_\_\_\_  
Marcella M. Hickey  
Hearing Officer

Date: February 25, 2002

**Appendix: D.T.E. 01-20 Department Record Requests Overdue on February 25, 2002**

<b>RR#</b>	<b>Subject</b>	<b>Issue Date</b>	<b>Due Date</b>
<b>DTE 1-S</b>	Supplement to DTE-1 re: wire centers with collocation	1/31/02	2/7/02 18 days overdue
<b>DTE-36</b>	Square footage of collocation space vacated by CLECs in 140 instances over last 6 years	1/22/02	1/29/02 27 days overdue
<b>DTE-38</b>	Space conditioning charges	1/22/02	1/29/02 27 days overdue
<b>DTE-40</b>	Conversion of emergency engine amp capacity to DC amps	1/23/02	1/30/02 26 days overdue
<b>DTE-50</b>	Line sharing/Line splitting OSS cost study, multi-part question.	1/25/02	2/1/02 24 days overdue
<b>DTE-83</b>	Five years of achieved distribution fill factor in MA	2/6/02	2/13/02 12 days overdue
<b>DTE-88</b>	Price out of billing determinant data for UNEs (multiplied by both present rates and proposed costs & compare revenues)	2/7/02	2/14/02 11 days overdue
<b>DTE-96</b>	Description of subaccounts of Column C of VZ cost study, page 9 of avoided cost study; advertising expenses for UNEs	2/7/02	2/14/02 11 days overdue
<b>DTE-98</b>	Multi-part switching question	2/13/02	2/21/02 4 days overdue
<b>DTE-99</b>	Dark fiber, including forecasts	2/13/02	2/21/02 4 days overdue